

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

DON KING PRODUCTIONS, INC.,

Plaintiff

v.

CIVIL 06-1479 (JAG)

EL TAMARINDO a/k/a BAR &
CAFETERÍA EL TAMARINDO,
EDWARD ÁLVAREZ DE JESÚS,
HIS WIFE JANE DOE AND THE
CONJUGAL PARTNERSHIP
BETWEEN THEM,

Defendants

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION IN
RELATION TO DEFAULT JUDGMENT AGAINST ABOVE DEFENDANTS

On May 17, 2006, Don King Productions, Inc., filed an action against El Tamarindo a/k/a Bar & Cafetería El Tamarindo, Edward Álvarez de Jesús, and his wife Jane Doe and others. Plaintiff was the producer and copyright holder of the closed-circuit telecast of the May 14, 2005, championship boxing match between Félix Tito Trinidad vs. Winky Wright, including the undercard or preliminary bouts. The telecast was not intended for the use of the general public.

This action arises under section 705 of the Federal Communications Act of 1934, as amended, 47 U.S.C. §§ 553, 605. Subject matter jurisdiction is proper under 28 U.S.C. § 1331 and 47 U.S.C. § 605.

Defendants were served with summons and copy of the complaint on July 30, 2006. (Docket No. 16.) They were not contractually authorized by plaintiff

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4 to televise the event to the public in their establishment. Upon the failure of
5 defendants, El Tamarindo a/k/a Bar & Cafetería El Tamarindo, Edward Álvarez de
6 Jesús, his wife Jane Doe and the conjugal partnership between them, to timely file
7 an answer to the complaint or otherwise plead, plaintiff requested that default be
8 entered against defendants. On November 14, 2007, the court entered default
9 against the defendants El Tamarindo a/k/a Bar & Cafetería El Tamarindo, Edward
10 Álvarez de Jesús, and his wife Jane Doe. (Docket No. 90.)

12 On November 15, 2007, plaintiff filed a motion requesting judgment by
13 default, with exhibits. (Docket No. 91.) The matter was referred to me on
14 April 1, 2008 for the setting of a hearing on damages. (Docket No. 95.) Such an
15 evidentiary hearing was held on May 9, 2008, and the testimony of Damary
16 Cintrón was heard in relation to the issue of damages.

18 Having considered the motion requesting judgment by default,
19 accompanying exhibits, and the testimony of May 9, 2008, as well as the relevant
20 statutory authority on damages, 47 U.S.C. § 605 et seq., I find as follows:

22 The plaintiff has established through competent evidence, especially the
23 testimony of security consultant Damary Cintrón, that actual and statutory
24 damages are appropriate as a result of defendants' illegal misappropriation of
25 plaintiff's transmission, based upon the approximately 20 people looking at the TV
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3 screen located at El Tamarindo on the evening of May 14, 2005 while the Trinidad-
4 Wright fight was being broadcast.
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6 Pursuant to 47 U.S.C. § 553(3)(A)(ii), the maximum amount for statutory
7 damages is \$10,000 per defendant. Pursuant to 47 U.S.C. § 553(3)(B), the court
8 has discretion to increase this to the maximum statutory provision of \$50,000 per
9 defendant if it finds the violation of copyright was willful and for commercial
10 advantage or private gain. I find that defendants' violations were willful and for
11 commercial advantage and warrant the maximum penalty, as well as maximum
12 statutory damages. Plaintiff is also seeking reasonable attorneys' fees. Plaintiff's
13 attorney is Glenn Carl James and has more than 15 years experience in federal
14 litigation. Therefore, an hourly fee of \$200 is not unreasonable and has been
15 approved previously on several occasions. Plaintiff has also incurred in costs in
16 the amount of \$545. (Docket No. 91.) These costs are three summonses at \$65
17 per summons (Docket No. 16), filing fee in the amount of \$150, and \$200 which
18 was the cost of employing Damary Cintrón as the investigator in this case.
19 Counsel reasonably dedicated eleven hours to prosecuting this action against the
20 defendants.
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24 In view of the above, it is recommended that the court enter default
25 judgment against the defendants El Tamarindo a/k/a Bar & Cafetería El
26 Tamarindo, Edward Álvarez de Jesús, and his wife Jane Doe in the amount of
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3 \$60,000 per defendant, as detailed below, together with statutory interest
4 thereon from the date of the order of default judgment.
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6 a. Pursuant to 47 U.S.C. § 553(3)(A)(ii), statutory damages of
7 \$10,000 per defendant.

8 b. Pursuant to 47 U.S.C. § 553(3)(B), maximum statutory
9 damages of \$50,000, per defendant.
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11 c. Attorney's fees in the amount of \$2,200 and costs in the
12 amount of \$545.

13 Because defendants are defaulted, the court is invited to adopt this report
14 and recommendation as unopposed and enter judgment accordingly.
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16 In San Juan, Puerto Rico, this 12th day of May, 2008.
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19 S/ JUSTO ARENAS
20 Chief United States Magistrate Judge
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